IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.460 of 2005

Mr.Ahmed Ilyas Sayani
(Moloo) and Ors. ..Petitioners

Vs.

Mr.Mohammad H.Moledina
and Ors. ..Respondents

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Mr.J.Shekhar i/b J.Shekhar & Co. for Petitioners
Mr.Nitin Jamdar for Respondents Nos.1 to 3 and 7 to 9.
Mr.Madhav Jamdar for Respondent No.6
M/s.Bhandari & Bhusan for Respondent No.4,5 & 10

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CORAM : B.H.MARLAPALLE,J.
DATE : APRIL 6,2005

P.C.:

1. Heard Mr.Shekhar, the learned counsel for the Petitioners who are the Plaintiffs in R.C.S.No.1071 of 2004. The suit has been filed for the relief of declaration that the Defendants nos. 1 to 10 have violated the legal rights of the Plaintiffs by carrying out illegal activities and the Defendant no.1 is illegally occupying the suit properties. The Plaintiffs have also prayed for possession of the suit property after demolishing the community hall and closing the staircase of Adhankhana. In the said suit, the Defendants have filed various applications under Section 9A of the C.P.C. questioning the jurisdiction of the Court to entertain the suit. An application under order VII Rule 11 of C.P.C. has

also been made and by the impugned order dated 13.1.2005, the learned IInd Jt.Civil Judge J.D.at Pune has held that the applications filed under Section 9 and under order VII Rule 11 of C.P.C. shall be decided simultaneously by framing appropriate issues.

2. Rather than framing the preliminary issues as prayed for in the applications submitted by the Defendants, the trial Court thought it fit to decide all the issues simultaneously and this view cannot be termed as perverse or grossly illegal so as to call for interference. Infact, no prejudice is caused at least for the time being to the Plaintiffs by the impugned order. The Plaintiffs are at liberty to file reply in support of their claim that the Court has jurisdiction to entertain the suit and the same issue regarding jurisdiction of the Court, will have to be framed along with other issues and the suit will have to be decided accordingly. If the findings on the issue of jurisdiction are against the Plaintiffs, no other issues are required to be decided.

3. The petition is rejected summarily.

[B.H.MARLAPALLE,J.]